

July 26, 1957

Judge Will L. Hoyt,  
Nephi, Utah

Dear Judge:

Enclosed are proposed Findings of Fact and incomplete Conclusions of Law. I have not attempted to draw a Decree because to do so would be useless undertaking until the Conclusions of Law are complete.

You will note that the Findings of Fact are in conformity with the allegations of the Petition which are admitted by the Answers and the Findings indicated by you in the Memorandum. You will note that proposed Finding number 31 is not entirely in accord with the allegations of paragraph 30 of the Petition. That Finding, however, is in conformity with the answers of William Grotegut and the United States Secretary of the Interior. You will also note that the Findings as to the water purchased by the Springville and Mapleton Irrigation Districts differ from that pleaded in the Petition. The figures in the Findings are in accord with the Answers of the Presidents of the respective Districts to interrogatories submitted to them. There is also a variance in the allegation of the Petition and the Answer of the Mayor of Spanish Fork City. I was reliably informed that the water subscribed by Spanish Fork City is as set out in the Petition.

I am sending a copy of the proposed Finding to Spanish Fork City, together with a copy of this letter so that when the Findings are finally signed the same will correctly state the facts. As to the water deliverable through the High Line Canal, part of the facts therein found are by admission contained in the Answer and part from the Answer of it's President.

I am sending copies of the proposed Findings to Counsel in the case and to those who are now with out Counsel. I have served notice on those for whom Counsel withdrew and sent proof thereof for the Clerk to file in the cause.

You will note that I have omitted from the Conclusions of Law suggestions you make in paragraph 9 of your Conclusions, I have done that because, as I understand, you did not intend that as a Conclusion. We have attempted to agree upon this phase of the case, which, as you are aware, has been the bone of contention between the parties for more than a quarter of a century. Of course, as you suggest in Conclusion No. 9, in order to make a valid Decree the Court must either itself fix the amount of the charges for the high water, or if a commissioner is to be appointed with authority to fix the amount, it is necessary for the Court to designate the basis which shall guide the Commissioner in making the determination. Of course, if the Court should attempt to lay down rules to guide a Commissioner it would seem that such a course would be more difficult than it would be for the Court to itself make the determination. Be that as it may, so far as I am presently advised the plaintiffs do not have any additional evidence that will aid the Court in reaching a decision on that phase of the case. Indeed, with the record before the Court of the operation of this project for more than forty years it would seem that the Court is as fully advised as it can be with respect to the water available and the rights of the parties.

Of course, in light of the position taken by the plaintiffs to the effect that they should not be deprived of the full amount of water called for in their applications in order to give to the defendants some water for which a full charge is not made, it would be inconsistent for them to take any other position. It may be suggested on behalf of the plaintiffs that the burdon is on the defendants to show, if they can, that they are entitled to some water at a charge less than the full amount used, and the amount of such reduced charge, and in the event of a failure so to do, they must be charged with the full amount. Such a conclusion would be an application of the well established rule that one must rely upon the strength of his own title. Lest I be charged with the impropriety of making this suggestion, I am sending a copy of this letter to the opposing Counsel. If the Court has any suggestion as to what additional facts would aid the Court in reaching a proper conclusion as to the matter concerning which it is not sufficiently advised, the plaintiffs will use their best efforts to supply the same.

It may be the defendants have some additional information. In our attempt to reach an agreement they have suggested that a final decision awaits further investigation. The plaintiffs feel very keenly that any such a plan will be wholly unjustified. That the evidence now available extends over a period of more than forty years, and to consume more time could not possibly add to the information presently available.

Very truly yours

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ELIAS HANSEN

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purchasers of a water right from the defendant, United States, and bring all of them before the Court, and the person plaintiffs herein prosecute this proceeding for and on behalf of all owners of contracts for the purchase of water rights from defendant, United States, who are similarly situated to these personal plaintiffs.

8. That defendant, United States, is a nation, and defendant, Douglas McKay, who was the United States Secretary of Interior at the time this section was commenced, had been succeeded by Fred Seaton as Secretary of the Interior of the United States at the time of the trial; that Wilbur A. Dexheimer is, and at all times since the Petition was filed herein, the United States Commissioner of the Bureau of Reclamation.

9. That defendants, Spanish Fork Southeast Irrigation Company, a corporation, the Clinton Irrigation Company, a corporation, the Salem Canal and Irrigation Company, a corporation, and the Strawberry High Line Canal Company, a corporation, are each now and for a number of years last past have been a corporation, duly organized and existing under the laws of the State of Utah and as such are engaged in the business of operating an irrigation system and in the delivering water to its stockholders and purchasers of water rights from the defendant, United States, as hereinafter more particularly set out.

10. That defendant, Strawberry Water Users Association, a corporation, is and since about 1926 has been a corporation duly organized and existing under the laws of the State of Utah and as such is engaged in the care, operation and maintenance of the Federal Project known as the Strawberry Valley Project and all appertenance thereunto belonging, except the irrigation systems of the defendants, Mapleton and Springville Irrigation Districts and the Strawberry High Line Canal, a Corporation, such care, operation and control of such Strawberry Valley Project is subject, however, to the supervision of the defendant, Fred Seaton, Secretary of the Interior, of the defendant, United States, and the defendant, Wilbur A. Dexheimer, Commissioner of the Bureau of Reclamation of the defendant, United States.

11. That the defendants Springville Irrigation District and the Mapleton Irrigation District are and for many years last past have each been a body corporate and politic duly organized and existing under the laws of the State of Utah, and as such have entered into a contract for the purchase of a water right from the defendant, United States, and each is engaged in the operation of an irrigation system and delivering water to those who have entered into contracts for the purchase of water to be supplied through such irrigation system.

12. That defendants, Roy Bradford and Garland Swenson are each the owner of a contract for the purchase of a water right from the defendant, United States, which contract provides for the delivery of water through the irrigation systems of the defendant, Spanish Fork Southeast Irrigation Company, a corporation.

13. That defendants Ernest Hanks and Keith Simons are each the owner of a contract for the purchase of a water right from the defendant, United States, which contract provides for the delivery of water through the irrigation system of the defendant, Salem Canal and Irrigation Company, a corporation.

14. That defendant, Ernest W. Mitchell and Bert Oberhansley, are each the owner of a contract for the purchase of a water right from the defendant, United States, which contract provides for the delivery of water through the irrigation system of the defendant, Clinton Irrigation Company, a corporation.

15. That the defendants, Glen Davis, Arzy Page, Laban Harding and George Q. Spencer are each the owner of a contract for the purchase of a water right from the defendant, United States, which contract provides for the delivery of water through the irrigation system of the defendant, Strawberry High Line Canal, a corporation.

16. That there are several hundred persons who have contracts for the purchase of a water right from the defendant, United States, which contracts provide for the delivery of water through the irrigation system of one or more of the defendants, Spanish Fork Southeast Irrigation Company, Clinton Irrigation Company, Salem Canal and Irrigation Company and Strawberry High Line Canal Company and therefore it is impracticable to bring in all of such purchasers of a water right from the defendant, United States, and therefore, plaintiffs prosecute this action against all persons similarly situated to the named personal defendants who have contracts to purchase water from defendant, United States.

17. That the defendants, William Grotegut, Geore Q. Spencer, A.C. Page, Glen F. Davis, Laban Harding, Dell S. Hiatt, E. R. Nelson, George W. LeBaron, Jr., H. H. Farr, Sylvester Allen, Arthur Finley, Reuben D. Gardner and Clifton Carson are members of the Board of Directors of the defendant, Strawberry Water Users Association, a corporation.

18. That defendants, Arthur Finley, Glen Sumsion and Reul Crandall constitute the members of the Board of Directors of the defendant, Springville Irrigation District.

19. That defendants, Neil Whiting and Bryan Tew are members of the Board of Directors of defendant, Mapleton Irrigation District.

20. That at the time of the commencement of this proceeding and at the time of the trial Joseph M. Tracy was duly appointed, qualified and acting State Engineer of the State of Utah.

21. That Spanish Fork River is a natural stream of water rising in the Wasatch Mountains and flows in a Northwestern direction and when its waters are not diverted, they empty into Utah Lake.

22. That in about 1907 the defendant, United States, began the construction of an irrigation project for the purpose of securing an additional water supply for the lands in the Southern part of Utah County. That in furtherance of the plan to secure such additional water, the defendant, United States, filed upon and acquired a right to the use of water that theretofore had flowed through the Duchesne, Green and Colorado Rivers down into the Gulf of California. It also acquired for the project, known as the Strawberry Valley Project, 56,868.51 acres of land in Wasatch County, Utah, a part of which land was secured for the purpose of constructing thereon a reservoir. Such reservoir was constructed and a tunnel was driven through the Wasatch Mountains and the water stored in the said reservoir diverted in the Diamond Fork of the Spanish Fork River. As a part of such project the United States constructed a power plant, two canals and laterals. The canals so constructed are known as the Strawberry High Line Canal, and the Sprinville-Mapleton Canal, which canals are hereinafter described in connection with the application for the appropriation of water from Spanish Fork River.

over { 23. That in 1905 the defendant United States filed with the State Engineer of Utah, an application to appropriate a flow of 156 cubic feet per second of the waters of Spanish Fork River to be used throughout the year for the generation of electricity. The application was approved and in due time the water applied for was used and is now being used in the operation of a hydro-electric plant near the mouth of Spanish Fork Canyon in Utah County, Utah, and a certificate of appropriation has been issued for the water applied for.

24. That on February 4, 1909, defendant, United States by its bureau of Reclamation filed an application with the State Engineer of Utah to appropriate a flow of 390 cubic feet per second of the unappropriated water of Spanish Fork River to be diverted from said river at a point which bears 381 feet West and 183 feet South of the Southeast corner of Section 2, Township 9 South Range 3 East, Salt Lake Base and Meridian, and to be diverted through a canal 221,000 feet long, 38 feet wide at the top, 4 to 20 feet wide on the bottom, having an effective depth of 5.6 feet. The water to be used from March 1st of each year to irrigate 19,907.88 acres of land. The lands particularly described in the application are located in the Southern end of Utah County, Utah.

In 1914 another application was filed by defendant, United States, by its Bureau of Reclamation with the State Engineer of Utah to appropriate an additional 100 cubic feet per second of the waters of Spanish Fork River. The water so applied for was to be diverted from the Spanish Fork River at the same point as was the water applied for in the other application last above mentioned, and was to be diverted through a canal 46,605 feet long from 10.5 feet to 38 feet wide on top, 4 to 20 feet wide on the bottom, having an effective depth of 1.8 to 6.2 feet. The water to be used from March 1st to November 1st of each year to irrigate 5417.8 acres of land in and near the town of Mapleton and the City of Springville in Utah County, Utah. In due time certificates of appropriation were issued to the defendant, United States, in care of the Bureau of Reclamation, for the water applied for except the certificate for the application for 100 second feet above mentioned was for only 90 cubic feet per second.

25. That in the year 1915, in the course of development of the Strawberry Valley Project the United States Bureau of Reclamation entered into contracts with various irrigation companies hereinafter named for carrying of project water through the canal systems of such companies for the use of purchasers of project water. That the contract so entered into with the plaintiff, Spanish Fork South Irrigation Company, contains among other provisions the following:

over { "Article 9. The company may divert from the flow of the Spanish Fork River such an amount of water as it is entitled to under (a) the decree of the fourth Judicial District Court of Utah dated April 20, 1899, rendered by W. W. McCarty, and (b) the decree of the same Court dated January 21, 1901, rendered by Judge J. F. Booth, and subsequent appropriations through prescription rights, the total of said amount of water diverted at any one time not to exceed Seventy-five (75) second feet, and the company so far as its rights and interests are concerned will permit the United States to take all other water in Spanish Fork River without interference."

26. That carrying contracts executed with other irrigation companies hereinafter named contain similar provisions except to the maximum quantity to be diverted by the respective company under its own rights. That the maximum quantity to be diverted by the respective companies under their own rights as recited in the carrying contracts are respectively as follows:

Spanish Fork East Bench Canal Company	95 c.f.s.
Salem Canal and Irrigation Company	55 c.f.s.
Spanish Fork South Irrigation Company	75 c.f.s.
Lake Shore Irrigation Company	60 c.f.s.
Spanish Fork West Field Irrigation Company,	
Spanish Fork City and Spanish Fork South East	
Irrigation Company through a canal known as the	
Mill Race	105 c.f.s.
Total	390 c.f.s.

27. That in distributing the waters flowing in the Spanish Fork River, the water commissioner appointed by the State Engineer of Utah has, ever since the above mentioned carrying contracts were entered into, acted upon the assumption that the irrigation companies and Spanish Fork City hereinabove named and their stockholders are entitled to receive a total of 390 c.f.s. of the flow of Spanish Fork River in the proportion as above set forth, before the rights acquired by the United States under its appropriation from Spanish Fork River should be recognized. That such practice has been followed continuously since the execution of said carrying contracts in the year 1915. That the rights or claims of said companies and Spanish Fork City an aggregate of 390 c.f.s. of the flow of Spanish Fork River prior to the rights acquired by the United States has not heretofore been contested in the courts during that period.

28. That beginning in the early part of 1915 the defendant United States entered into contracts with individual land owners whose land could be irrigated with river water developed and filed upon by the defendant, United States, whereby the United States agreed to sell and the land owners agreed to purchase soom of such developed water with which to irrigate such owners land. That there were several hundred such contracts entered into with individual land owners.

29. That the contracts entered into by and between the defendant, United States, and the land owners who were to receive the water rights purchased though the established irrigation systems of the plaintiffs, Spanish Fork West Field Irrigation Company, Spanish Fork South Irrigation Company, East Bench Canal Company, Lake Shore Irrigation Company and Clinton Irrigation Company, which was to be formed, and the defendants, Spanish Fork Southeast Irrigation Company and Salem Canal and Irrigation Company contained among others these provisions:

"The purchaser of a water right to be delivered through the established irrigation systems were permitted to purchase as a water right either one-half, one, one and one-half or two acre feet per acre per annum but purchasers were required to pay for such water rights at the rate of \$45.00 per acre foot. The purchasers were also required to pay their pro-rata cost of the maintenance, operation and betterments of the project and were to receive their pro-rata share of the income of the project, that is to say from the lands and the power plant of the project. A mortgage was given on the land where the water was to be used as security for the payment of the purchase price. The water purchased was by the contract to be delivered in Spanish Fork River at the hand of the irrigation system through which the water was to be carried to the land of the purchaser during the months of May to September, inclusive, at such rate of delivery as the water right applicant may desire, insofar as such rate may be feasible as determined by United States, but in no event at a rate of flow per month greater than 40 per cent of the total annual supply in a flow as nearly uniform as practicable, unless otherwise mutually agreed. The applicant assumes all such risk of loss in the transporting of the water from the point of delivery to the said land."

30. Most of the contracts with the purchasers of water to be delivered through the defendant Strawberry High Line Canal contained among others the following provisions:

"The quantitative measure of water right hereby applied for is that quantity of water which shall be beneficially used for the irrigation of said irrigable land up to, but not exceeding two (2) acre feet per acre per annum, measured at the head of the Strawberry High Line Canal, and in no case exceeding the share proportionate to irrigable acreage, of the water supply actually available as determined by the Project Manager or other proper officer of the United States, or its successor in the control of the project, during the irrigation season for the irrigation of lands under said unit. The applicant assumes all risk of loss in transporting the water from the point of delivery to said land."

There were some whose land is irrigated through the Strawberry High Line Canal who purchased three acre feet of water per acre.

The purchaser of the water right agreed to pay \$80.00 per acre of irrigable land and in addition thereto the annual charge for operation and maintenance of the Strawberry High Line Canal which was constructed by the United States. The cost of constructing the Strawberry High Line Canal was not charged solely against those who received their water through said canal, but was charged as a part of the construction of the entire project.

31. That during the time the provisions to be placed in the contracts for the sale and purchase of the water rights under the Strawberry Valley Project were being discussed, various reasons were assigned for the difference in the price of ~~\$45.00 per acre foot charged for water deliverable~~ through the established irrigation systems and \$80.00 for two acre feet to be charged for water to be delivered through the Strawberry High Line Canal, which canal was to be and was constructed by the United States, and the cost thereof charged to the project generally, and not solely to those who received their water through said Strawberry High Line Canal. Among such reasons discussed were: that the purchasers of water deliverable through the old irrigation systems had the option to purchase only such quantity of water as they desired and the same would be stored water, while those who purchased water deliverable through the Strawberry High Line Canal were compelled to purchase at least two acre feet and part of the water to be diverted through the Strawberry High Line Canal was river water; that the right to the river water was acquired without any substantial expense; that at a meeting held in Lake Shore on January 14, 1915, by agents of the United States and the stockholders of the plaintiff, Lake Shore Irrigation Company,:

"The matter of the difference in the cost per acre foot between the water that is being sold to the High Line Unit and the Lake Shore Unit was brought up and it was explained that the difference was mainly due to (a) the Lake Shore Unit desire only stored water delivered practically on call; (b) that they desire only such part of the land for such part of the water right as they might desire; (c) that the maintenance and operation to the High Line Unit would be double that levied on the Lake Shore Unit on account of the High Line land owners being required to take two acre-feet of water, while the Lake Shore only take one-acre foot; (d) that the Lake Shore Unit desire to purchase a comparatively small amount of water as compared to the High Line and the general, legal and administrative expense would be high in proportion."

32. Under date of April 7, 1916, Defendant, United States, entered into a contract with defendant, Strawberry High Line Canal which had theretofore been incorporated under the laws of the State of Utah wherein and whereby the operation and maintenance of said canal was turned over to defendant, Strawberry High Line Canal Company. Said company undertook and agreed to deliver to those who had agreed to purchase from defendant, United States, water which was to be carried through the Strawberry High Line Canal the quantity of water to which they were entitled.

33. Under date of September 28, 1926, defendant, United States, entered into a contract with defendant, Strawberry Water Users Association, a corporation, which had theretofore, in 1922 been organized under the laws of the State of Utah, by which contract it was, among other matters, agreed:

"That the care, operation and maintenance of the entire Strawberry Valley Project in Utah and all appurtenances thereunto belonging except the Springville and Mapleton lateral and the Strawberry High Line Canal was transferred to the Association. This transfer is made subject to the terms of all the existing contracts. No title to any of the property passes. The property so turned over shall hereinafter be referred to as the transferred property.

"The Association shall make proper distribution and delivery of water to all parties entitled thereto in full accordance with the provisions of their contracts now and hereafter made and the reclamation law and the public notices and rules and regulations issued by the Secretary thereunder.

"Beginning with the year 1927, the established operation and maintenance charge applicable to each acre-foot of water supplied under contract or water-right application from the project supply, whether to members or non-members of the association, will be collected in advance each year by the association and water will not be delivered until such charge has been paid. Said operation and maintenance charge for the transferred works shall be distributed equally against each acre-foot of water sold from the project supply, and when the required payments have been made there shall be delivered to those entitled to the same under the various contracts and water-right applications the same share of the available water supply to which they would be entitled if the United States continued to operate and maintain the transferred works.

34. That in 1917 defendant, United States, entered into a contract with defendant, Springville Irrigation District, which had theretofore been organized as an irrigation district under the laws of the State of Utah, Such contract in substance provides:

"That the United States will construct at its expence for the joint use and benefit of the Springville and Mapleton Irrigation districts, a canal for the porpose of carrying water from Spanish Fork River and the Strawberry Valley Project approximately 2400 acre feet of water per annum at the rate of not more than 40 per cent of the total during any one month. the agreed price to be paid for such water is \$114,000.00."

That the Springville Irrigation district has purchased a water right from the United States under the Strawberry Vally Project for the delivery of a total of 4,490 acre feet per annum.

35. that in 1918 a contract containing substantially the same provisions as those contained in the contract between the United States and the Springville Irrigation District hereinbefore set out was entered into between defendant, United States, ant the Mapleton Irrigation District which had theretofore been organized as an irrigation district under the laws of Utah. The contract, however, differed in this: By the contract between the United States an the Mapleton Irrigation District, the United States agreed to sell and the Mapleton Irrigation District agreed to purchase 3,600 acre feet of water and to pay therefor the sum of \$171,000.00. The joint canal to be constructed was to be capable of carrying a flow of 80 cubic feet per second from Spanish Fork River to Hobbble Creek.

That the Mapleton Irrigation District has purchased a water right from the United States under the Strawberry Valley Project for the delivery of a total of 5,701 acre feet per annum.

36. Pursuant to the above contracts between the United States and the Springville and Mapleton Irrigation districts above mentioned, the United States constructed the canal provided for in such contract and since its construction water has been delivered as by such contract provided.

37. During 1917 defendant, Spanish Fork City, entered into a contract with defendant, United States, by which the City agreed to Purchase and the United States agreed to sell 447.12 acre feet per annum from the Strawberry valley Project. The contract so entered into is similar to the contract entered into with the private persons who were to receive water through the East Bench Canal Company system heretofore mentioned. Spanish Fork City has aquired additional water rights under the Strawberry project, and it now owns a right to 494.86 acre feet per annum of which 445.12 acre feet is deliverable through the said East Bench Canal system and 47.74 acre feet through the irrigation system of defendant, Strawberry High Line canal.

38. That in about 1917 defendant, Payson City, entered ito a contract with defendant United States whereby said city agreed to by and the United States agreed to sell 1,444.12 acre feet of water from the Strawberry Valley Project. The contract for the purchase of such water provides that the same shall be delivered through the irrigation system of the Strawberry High Line Canal and contains provisions similar to the contract with private persons whose water is delivered through said Strawberry High Line Canal.

39. That the number of acre feet of water purchased from the United States which are to be delivered through the various irrigation systems are as follows:

Through the Strawberry High Line Canal	40,377.26 acre feet per annum
Through the Springville and Mapleton Irrigation system:	
To Springville Irrigation District	4,490.00
Mapleton Irrigation District	<u>5,701.00</u>
Through the Lake Shore Irrigation System	2,815.23
Through the East Bench Canal Company	7,681.33
Through the Mill Race to the Spanish Fork West Field	3,094.34
and to the Spanish Fork Southeast Irrigation System	246.63
Through the Salem Canal and Irrigation System	326.77
Throught the various points of diversion of the Clinton Irrigation System and other points of diversion in Spanish Fork Canyon	1,412.40
Through Spanish Fork South Irrigation System	<u>4,435.36</u>
Total	70,780.32 acre feet per annum

That of the water deliverable through the Strawberry High Line Canal 39,665.45 acre feet per annum has been purchased from the United States by Stockholders of the Strawberry High Line Canal Company, and the balance of the 40,377.36 acre feet has been purchase by the Strawberry High Line Canal from submarginal lands. That the number of acre feet deliverable through the Strawberry High Line Canal varies somewhat from year to year due in part to the fact that some stockholders do not pay their assessments, and while in arrears are not entitled to delivery of water.



40. That the storage capacity of the Strawberry Valley Reservoir is in excess of 1,270,000 acre feet.

41. That the articles of incorporation of the defendant, Strawberry Water Users Association provide for sixteen directors. The area irrigated with water from the Strawberry Valley Project is divided into 16 districts in such a manner that each district contains substantially the owners of the same number of acre feet of water purchased from the United States. That as a result of such provision in the articles of incorporation of defendant, Strawberry Water Users Association, the owners of contracts to purchase water which is delivered through the Strawberry High Line Canal Company always have a majority of the Board of Directors of said association, and, therefore control its policy.

42. That ever since the Strawberry Water Users Association took over the operation of the Strawberry Valley Project from the United States pursuant to the contract above mentioned and dated September 28, 1926, there has been a controversy between the members of the Board of Directors of such association who represent areas where the land is irrigated by water diverted through the defendant Strawberry High Line Canal and Springville Mapleton Canal on the one hand and on the other hand those directors who represent areas where land is irrigated by water diverted through the irrigation systems of the plaintiffs, East Bench Canal Company, Spanish Fork West Field Irrigation Company, Spanish Fork South Irrigation Company, and the Lake Shore Irrigation Company. In such controversy the members of the Board of Directors of said association who represent the areas that are irrigated through defendant, Strawberry High Line Canal, and the Canal of Springville-Mapleton Irrigation Districts, have claimed the right and authority to determine from year to year the amount of water that each purchaser of water from the United States is entitled to receive pursuant to his contract of purchase and particularly do such members of the Board of Directors of said association contend that those who receive water through the Strawberry High Line Canal need not be charged with any water which consists of the flow of Spanish Fork River, and which is diverted to and used by those whose lands are irrigated with water diverted through defendant, Strawberry High Line Canal Company. In the main, throughout the years, the members of the Board of Directors who represent the area irrigated with water diverted through the canal of Mapleton-Springville District have joined with the members of the Board of Directors representing the land irrigated through defendant, Strawberry High Line Canal, and so joining, contend that defendants, Springville and Mapleton Irrigation Districts should not be charged with any of the flow of the water from Spanish Fork River that may be used by them. On the other hand, all of plaintiffs herein, including plaintiffs who are members of the Board of Directors of defendant, Strawberry Water Users Association, contend that those who have entered into contracts for the purchase of water from the defendant, United States, are chargeable with all the water which they use, whether the same is water from the flow of Spanish Fork River or from the water that has been stored in the Strawberry Reservoir, and that the private persons who have purchase water under the defendant, Strawberry High Line Canal Company, are limited to two acre feet annum, or three acre feet per annum if they have purchased three acre feet, and defendant irrigation districts and cities are limited to the use of the water provided for in their respective contracts whether the source of such water be from the flow of Spanish Fork River or that stored in the Strawberry Reservoir.

43. That for a number of years prior to 1934 an arrangement was had between the parties to this controversy whereby those who use the flow of Spanish Fork River appropriated by defendant, United States, should be charged with 5000 acre feet per year with out regard to whether or not that was the exact amount of water derived from that source, but since 1934, the members of the Board of Directors who represent the areas irrigated with water delivered through the Strawberry High Line Canal, and at times assisted by those who represent water delivered to the Mapleton and Springville Irrigation Districts have from year to year fixed the amount that the water users should be charged for the water used in such areas, and during each and every year such charges have been less than that actually used and as a result of such actions on the part of such majority of the plaintiffs Directors, the purchasers of water under the irrigation systems of the plaintiffs herein may have been deprived of their right to the use of water to which they are entitled to their irreparable injury. That the defendant members of the Board of Directors of the defendant, Strawberry Water Users Association, threaten to and will, unless restrained, continue to so order the water of the Strawberry Project distributed to and used as herein alleged.

44. That if the purchaser of a water right deliverable through the Strawberry High Line Canal, or the Canal of Springville-Mapleton Irrigation District are not charged with at least some of the water which they receive from the natural flow of Spanish Fork River, and are permitted to receive all of the water purchased by them from the stored water in the Strawberry Reservoir, such procedure will (during years when there is not sufficient water to supply the amount of



water sold by defendant United States) result in depriving the purchasers of water deliverable through the established irrigation systems of a part of the water right which they have purchased and thereby such purchaser will be deprived of their property and property rights with out due process of law contrary to the provisions of the Fifth Amendment of the Constitution of the United States, wherein it is provided that

"no person shall . . . be deprived of property with out due process of law."

and section one of the 14th Amendment of the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, and likewise such procedure is contrary to and in violation to Section 7 of artical one of the constitution of Utah wherein it is provided that "No person Shall be deprived of . . . property with out due process of law."

45. That in the course of development of the Strawberry Project at least nine different forms of applications for water rights were used, but notwithstanding the difference in the language and provisions of the various form of water right applications, it was intended that the relative rights of applicants as to water to be received should be measured in terms of acre feet, and that in the case the total supply of water available in any year should be insufficient to fully supply all applicants, then the supply available should be prorated to the acre feet subscribed for by the holders of applications approved and then in good standing that none of the applications contained any provision for any user to receive water from the Project without being charged in full for the amount received. That none of the applications required the users to receive water otherwise than upon call. That the majority of the applications specify a period of delivery of water from May 1st to September 30, while <sup>some</sup> specify the irrigation season, and others contain no recital as to time of delivery. That all of the applications contain limitations as to the percentage of water to be delivered in certain months. Toune

46. That at all times during the development of the project and the sale of water rights the high water right acquired by the United States in the flow of the Spanish Fork River were intended and advertised to be a part of the project water rights.

47. That the season of high water, i.e. when the flow of the Spanish Fork River exceeds 390 c.f.s., usually accurs between about April 1 and May 20, and usually lasts not more than two or three weeks. That average diversions of high water for irrigation during the years 1919 to 1956 were as follows:

March	312 acre feet
April	2048 acre feet
May	4798 Acre feet
June	923 Acre Feet

48. That during said season of high water in the river there is no demand or need for project water by the stockholders of the above mentioned irrigation companies nor by any users except users under the Strawberry High Line Canal or the Springville-Mapleton Canal. That water users under said two canals, and particularly under the Strawberry High Line Canal, can make profitable use of such high water or a substancial part thereof, but water delivered prior to May 1 is usually not so much need valuable for most crops as water delivered subject to call later in the season.

49. That, if water users are charged for the full volume of water used from the river during said season of high water they will probably use substancially less of it, except in dry seasons, than if a smaller charge is made for its use. That thin would result in heavier demands for stored water later in the season. A further result would probably be that a portion of such high water would waste into Utah Lake and be lost as project water.

50. That Sustantially all the water used from the Spanish Fork River under the high water rights held by the United States have heretofore and will hereinafter be used by water users under said Strawberry High Line Canal and Sparingville-Mapleton Canal. That if a low charge for use of such high water from the Spanish Fork River is made by the Association, it will operate to <sup>the</sup> special advantage of water users under said Strawberry High Line Canal and the Springville-Mapleton Canal.

51. That the supply of water available for irrigation from the Strawberry Reservoir fluctuates from year to year, dependant upon precipitation and weather conditions. That the net yeald to storage in the reservoir in 1931 was 19,067 acre feet. That in 1934 it was only 8,153 acre feet, while in 1952 it was 153,668 acre feet. That the average annual yeald to storage from 1913 to 1955, both inclusive was 61,688 acre feet as shown by defendants' Exhibit 73.

52. That in thirteen years between 1932 and 1952 the supply of water under the project was insufficient to supply water users with the full amount of water applied for by them. That the average percentage received by all water users under the said project in said thirteen years was 78.15 per cent of the amount applied for.

53. That during said thirteen years the amount of water diverted from the Spanish Fork River for use as project water averaged 10,669 acre feet annually, and the average charge made therefor was 26.76 per cent of the amount received.

54. That during the period from 1919 to 1938, both inclusive, it appears that an average of 9310 acre feet of water was diverted annually from the Spanish Fork River for use as project water, and that the rate of charge therefor during said period was 46.4 per cent of the volume used. That during the period from 1939 to 1955, both inclusive, the average diversion of water from the river for use as project water was 6940 acre feet, and the average rate of charge therefor was 15.5 per cent of the volume used. (See defendants' Exhibits 69 and 73).

55. That counsel for plaintiffs has consented that the claim made by plaintiffs in paragraph 42 of their petition relative to hold over storage of water not used in one season and withdrawal during a subsequent season may be dismissed.

56. That the hydro-electric power plant constructed by defendant United States is located on the canal which diverts water from Spanish Fork River at the point described in paragraph 23 hereof. Such canal is known as the power canal down to the above mentioned hydro-electric power plant which is located about three miles northwesterly from where the water is diverted from the Spanish Fork River. That water is carried through the above mentioned canal to a point above the power plant.

57. That the canal that diverts water from Spanish Fork River at the point described in paragraph 23 hereof is used to divert water to supply the hydro-electric plant constructed by the defendant United States, and also to divert water to supply water to those who irrigate their land under the Strawberry High Line Canal. At a point about three miles northwesterly from where the water is diverted into the above mentioned canal, the river water, containing 156 second feet, or so much thereof, is available, is dropped from said canal to furnish power to generate electricity, which electricity is sold to the communities in the southern end of Utah County. That the revenue derived from the operation of said power plant is applied on the construction of the Strawberry Project, and thus all of the purchasers of water under the Strawberry Project are benefited from the revenue derived from the operation of said plant. That at times there is not sufficient river water available in the above mentioned canal to supply the needs of both those who use water for consumptive purposes and to supply the power plant. Because of such scarcity of water, it occasionally occurs that river water is delivered through the above mentioned canal to be used for irrigation and other consumptive uses, and the power plant is deprived of the use of the 156 cubic feet per second, or a part thereof, to which it is entitled, with the result that the power plant is unable generate sufficient power to supply the demand for the same and to provide for such deficiency of power, it is necessary to purchase the same from other sources, namely: Utah Power and Light Company. That there is no provision in the contracts between the parties herein, or with the United States, dealing with such a situation, and in view of the fact that a majority of the Board of Directors of the defendant, Strawberry Water Users Association, represent areas that are irrigated with water diverted through the Strawberry High Line Canal, they at times ordered water diverted through said Strawberry High Line Canal for consumptive use even though in so doing the power plant is deprived of water to which it is entitled for the generation of power. That Counsel for defendant, Strawberry High Line Canal Company, has stipulated that said Company is chargeable for loss of power revenue occasioned by the diversion of water away from the project hydro-electric plant as alleged in paragraph 45 of plaintiffs' petition herein.

58. That plaintiffs and their attorneys have attempted to secure an adjustment of the controversy existing between them and the defendants as herein before alleged, but they have been unable to do so.

59. That there is an uncertainty and controversy as to the construction that should be given to the various contracts and other documents mentioned in the petition, which uncertainty and controversy will be terminated and settled by a decree entered herein.

60. That all of the parties herein have an interest in the subject matter of this controversy, and all parties interested in the subject matter of this controversy have been made parties, either by expressly being made so, or by those parties who are expressly named parties for themselves, and all other persons similarly situated.

61. That defendants, Spanish Fork Southeast Irrigation Company and Garland Swenson and Roy Bradford, two of its stockholders have a common interest with plaintiffs herein, but they have refused to join as plaintiffs, and, therefore, they have been made defendants.

62. That defendant, Clinton Irrigation Company and two of its stockholders, Ernest W. Mitchell and Bert Oberhansley, have a common interest with plaintiffs herein, but they have refused to join as plaintiffs, and, therefore, they have been made defendants.

63. That defendant, Spanish Fork City, is the owner of a contract to purchase a water right deliverable through plaintiff East Bench Canal Company, and also a contract for the purchase of a water right through defendant, Strawberry High Line Canal, and it has refused to join as a party plaintiff, and, therefore, has been made a party defendant.

64. That the Salem Canal & Irrigation Company and its stockholders have a common interest with plaintiffs herein, but numerous of its stockholders have contracts for the purchase of a water right delivered through the Strawberry High Line Canal, and said defendant, Salem Canal and Irrigation Company, and two of its stockholders, Ernest Hanks and Keith Simons, have refused to become parties plaintiff, and, therefore, have been made parties defendant.

65. That during the course of the trial of this cause Christenson, Christenson, Novak and Paulson, who appeared as the attorneys of record for defendants, Salem Canal and Irrigation Company, A corporation, Ernest Hanks, Keith Simons, two of its directors, Spanish Fork Southeast Irrigation Company, Garland Swenson and Roy Bradford, two of its stockholders, Clinton Irrigation Company, a corporation, Bert Oberhansley and Ernest Mitchell, two of its stockholders, and Spanish Fork City, a corporation, ask leave to withdraw as their counsel because the interest of such defendants conflicted with the other defendants represented by said attorneys. The request was granted. Counsel for the plaintiffs has notified the defendants last above mentioned of such withdrawal of their attorneys in full compliance with Utah Code Annotated 1953, 78-51-36.

From the foregoing Findings of Fact the Court now makes the following:

CONCLUSIONS OF LAW

1. That the approved applications for water rights in the Strawberry Project constitute contracts between the United States and the applicants.

2. That, under such approved applications, and subject to payments being made as thereby required, the applicants acquired equitable interests in the Strawberry Project water rights. That such rights are subject to the provisions of the Reclamation act, which, among other things, provides that the title to reservoirs and the works necessary for their protection shall remain in the government until otherwise provided by Congress.

3. That the rights acquired by the United States under its applications to appropriate waters from the flow of Spanish Fork River was subsequent to the rights of irrigation companies and their stockholders to divert from the river the following quantities of water to wit: ST

Spanish Fork East Bench Canal Company	95 c.f.s.
Salem Canal and Irrigation Company	55 c.f.s.
Spanish Fork South Irrigation Company	75 c.f.s.
Lake Shore Irrigation Company	60 c.f.s.
Spanish Fork West Field Irrigation Company	105 c.f.s.
Total	390 c.f.s.

4. That water rights Acquired by the United States in the flow of the Spanish Fork River under its appropriations constitute a part of the Strawberry project water rights.

5. That by their applications for water rights in the Strawberry Project, the applicants, upon approval of their application and subject to payments required of them, acquired rights to share ratably, in proportion to the number of acre foot applied for, in the waters of the project as a whole, including both storage water and water available under appropriation by the United States in the flow of the Spanish Fork River.

6. That the Strawberry Water Users Association, in its management and operation of the Strawberry Project, does not have the right to allow diversion of water from the river without charging the users therefor.

7. That the charge to be made should be adequate to properly protect the rights of other users under the project.

8. That since it appears that if a full charge is made for such water a portion of it will probably go unused and be lost to the project, the Court should determine and fix an equitable charge to be made for such water or in the alternative appoint a disinterested commissioner or commissioners to determine and fix a rate of charge from year to year.

9. That during the time that water is being diverted from the Strawberry Valley Reservoir a full charge shall be made for all of the water right in Spanish Fork River which has been acquired by the United States in said river and which is used by purchaser of a water right from the United States.

10. That paragraph 43 of plaintiffs' petition relative to holdover storage rights should be dismissed.

11. That judgment should be awarded in accordance with the stipulation of counsel for defendant Strawberry High Line Canal Company relative to compensation for loss of power revenue on account of diversions of water from the project hydro-electric power plant.

12. That each party should bear his own costs.